

## REMARKS/ARGUMENTS

### Claim Rejections – 35 USC 112

Examiner rejected Claims 26 – 38 under 35 USC 112, first paragraph. Specifically, Examiner stated that, “(s)ince the terms and phrases used in the claims, as noted above, are not in the specification, this objection to the specification is indeed proper.” It is unclear to Applicant which “terms and phrases” in the claims are not in the specification. Nevertheless, in an effort to proceed forward with the prosecution of the application, Applicant has amended Claims 26 – 38 so that they very closely resemble Examiner’s suggested wording given in Examiner’s Office Action dated February 2, 2003. However, in so doing Applicant wishes to make it clear that computer controlled automatic activation and deactivation of the spa components, including the pump and air blower, is described repeatedly in the specification as filed (see Applicant’s remarks on pages 2 – 5 in Preliminary Amendment of August 26, 2003).

### Claim Rejections – 35 USC 103

Examiner has rejected Claims 26 – 38 under 35 USC 103(a) as being unpatentable over Tompkins in view of Dundas. Specifically, Examiner states

(i)t would have been obvious to one of ordinary skill in the spa/pool art, at the time the invention was made, to use an ambient air temperature sensor in the control system of Tompkins in view of the teaching of Dundas in order to more effectively operate the control system using minimal energy and less waste and expense.

In rejecting Applicant’s claims, Examiner has restated the same argument stated in the 2/27/03 Office Action,

Although Tompkins et al. fail to disclose the use of an air temperature sensor and although Tompkins et al. use water temperature sensor 21 as well as other water sensors to operate the freeze control system, attention is directed to Dundas who discloses another freeze control system for a spa or pool that uses both a water temperature sensor and an ambient air temperature sensor to activate the control system in order the heat the pool using minimal energy with less waste and expense.

Applicant submits that the combined teachings of Dundas and Tompkins do not suggest the present invention as presently claimed. Dundas does not disclose or suggest a freeze control system in which a computer is programmed to use signals from an ambient air temperature sensor to activate and deactivate a water pump control system. As stated above, Dundas makes a specific point that to operate as a freeze control system, his device needs to be manually operated. Not only is the action taken a manual one (as compared to Applicant's computer control), but the action is to operate an air pump not a water pump. There is no suggestion in Dundas to program a computer to use the ambient air temperature to regulate a water pump to prevent freezing.

It should also be noted that Dundas' device would not work for the intended purpose of Applicant's invention, to prevent freezing of spa piping. The Dundas technique for freeze control (i.e., pumping air into a pool) would not prevent water from freezing inside Dundas' pipes.

#### Response to Examiner's Comments of Page 5, Paragraph 9

In responding to Applicant's previous arguments regarding Dundas, Examiner states,

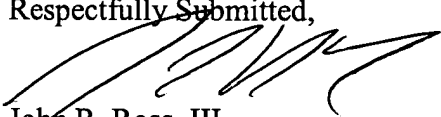
It is pointed out that the Dundas reference does indeed describe an automatic control using the ambient air temperature to activate the control system of a pump. The Dundas reference also discloses using the system during freezing weather, which is exactly what the Tompkins reference and its control system is concerned with.

It appears to Applicant that Examiner is making an unfair extrapolation of the Dundas disclosure. Dundas does use ambient air temperature to control a pump but it is an air pump (not a water pump) and the control is not for freeze control but to heat the pool water. Dundas does not disclose automatic control of even his air pump for freeze control. Applicant submits that the Dundas disclosure is irrelevant to the present invention.

## CONCLUSION

Thus, for all the reasons given above, this application, as the claims are presently limited, define a novel, patentable, and truly valuable invention. Hence allowance of this application is respectfully submitted to be proper and is respectfully solicited.

Respectfully Submitted,



John R. Ross, III  
Ross Patent Law Office  
Regis. No. 43060  
PO Box 2138  
Del Mar, CA 92014  
Phone: 858-755-3122  
Fax: 858-755-3122